

Leech Lake Tribal Council



IN REPLY REFER TO:

ALFRED R. PEMBERTON,
CHAIRMAN
DANIEL S. BROWN,
SECRETARY-TREASURER
ALFRED FAIRBANKS, JR.,
DISTRICT I REPRESENTATIVE
JACK H. SEELYE,
DISTRICT II REPRESENTATIVE
MYRON F. ELLIS,
DISTRICT III REPRESENTATIVE

MEMORANDUM

TO: CLAUDIA JOHNSON-SCHULZ

FROM: ANITA FINEDAY *Anita Fineday*
TRIBAL ATTORNEY

RE: EMERGENCY RESPONSE TO ENVIRONMENTAL HAZARDS
ON THE LEECH LAKE RESERVATION

DATE: NOVEMBER 18, 1994

Pursuant to your request, I am submitting two documents which relate to the emergency powers of the Leech Lake Band of Chippewa. These documents are the "Memorandum of Understanding Between the Minnesota Chippewa Tribe, the State of Minnesota and the United States Environmental Protection Agency Regarding the Implementation of Title III Emergency Planning and Providing for Emergency Response to Release of Hazardous Substances and Petroleum". This agreement has been extended for another year and is currently valid and in full effect. In addition to that agreement, I am enclosing a copy of Resolution No. 25-90 which was duly enacted by the Minnesota Chippewa Tribe on August 15, 1990. This resolution concerns cease and desist orders within the exterior boundaries of all six of the reservations of the Minnesota Chippewa Tribe.

The Leech Lake Band originally applied for Treatment as a State under section 106 of the Clean Water Act. Please accept this memorandum as our request to modify that request. The Leech Lake Band now asks that we be granted Treatment as a State under both Sections 106 and 314 of the Clean Water Act. If you have any questions please do not hesitate to contact me.

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE MINNESOTA CHIPPEWA TRIBE,
THE
STATE OF MINNESOTA
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGARDING THE IMPLEMENTATION OF
TITLE III
EMERGENCY PLANNING
AND
PROVIDING FOR EMERGENCY RESPONSE TO
RELEASE OF HAZARDOUS SUBSTANCES
AND PETROLEUM

MEMORANDUM OF UNDERSTANDING

I. PURPOSE OF THE MEMORANDUM OF UNDERSTANDING

The purpose of this MOU between the Minnesota Chippewa Tribe (Tribe), the State of Minnesota (State) and the United States Environmental Protection Agency (EPA) is to protect public health, the environment and natural resources from threat of hazardous materials by:

1. minimizing the number of serious hazardous chemical releases and to improve the ability to the Tribe to respond to releases of hazardous chemicals by assisting the Tribe in developing its own emergency planning and community right-to-know program under Title III of the Superfund Amendments and Reauthorization Act; and
2. providing for emergency response to the release of hazardous substances and petroleum.

II. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW

- A. The Tribe, the State and EPA agree to work together in developing a comprehensive Title III program to be implemented for the six Reservations of the Minnesota Chippewa Tribe.
- B. The State will provide technical assistance to the Tribe as follows during the term of this agreement.
 1. The State will invite representatives of the Tribe to attend Title III training sessions sponsored by the State.
 2. The State will provide guidance documents to the Tribe on Title III emergency planning procedures.
 3. The State will provide the Tribe with hazardous chemical report information received by the State from facilities located on Tribal land, and will provide access to other hazardous chemical report information that the Tribe believes is necessary or useful in developing the Tribe's Title III program.

4. The State will receive hazardous reports from regulated facilities located on Tribal land in the same manner as those received from other regulated facilities, in accordance with administrative rules adopted by the State governing reporting required by Title III, MN Statute Ch. 299K (Minnesota Emergency Planning and Community Right-to-Know Act) and any corresponding Tribal code.

C. The Tribe will:

1. Prepare and adopt intergovernmental agreements between the Tribe, State, EPA and other state and federal agencies, as necessary for long range development and implementation of Title III regulations for the Minnesota Chippewa Tribe Reservations.
2. Create Local Emergency Planning Committees to develop Title III data management and inventory programs for the areas of hazardous chemicals, extremely hazardous substances, and toxic chemicals. These programs should include enforceable reporting requirements, tribal codes, and administrative procedures, subject to the approval of the six Reservation Tribal Councils (RTC) and the Minnesota Chippewa Tribe, Tribal Executive Committee (TEC) as the duly authorized government of the Tribe.
3. Take initial steps in carrying out actual program implementation activities under the program developed and adopted by each Reservation Tribal Council.
4. Develop data management, future programming, and funding plans.
5. Develop the necessary support staff and infrastructure to enforce tribal ordinances and resolve and regulator/regulatee conflicts which may arise in the course of enforcement of those ordinances.

- D. EPA will provide the following assistance to the Tribe:
1. The EPA will provide technical assistance to the Tribe on topics related to Title III and related software use.
 2. The EPA will provide training assistance as follows:
 - a. The EPA provides training funds to FEMA under Title III Sec. 305(a). These funds are used to provide various emergency training programs for state and local governments. EPA will provide instructors and assistance for these training programs as requested by the Tribes or FEMA.
 - b. EPA will participate in training provided by the Regional Response Team funds available for such purposes.
 3. EPA will process enforcement referrals from the Tribes or individuals living within the exterior boundaries of the Reservations, in a manner consistent with referrals received from SERCs. If the Tribe becomes a separate SERC, EPA will accept enforcement referrals directly from the Tribe.
- E. The parties will consult with each other on hazardous material and environmental issues related to Title III of mutual concern within or near the six Minnesota Chippewa Tribe Reservations. The parties will endeavor to establish and maintain close communications and coordination with each other in order to protect public health, the environment and natural resources from the threat of hazardous material.
- F. At the request of the Tribe, the State, Tribe and EPA will jointly cooperate in the inspection of facilities located on Tribal land, which may be subject to the reporting requirements of Title III, MN Statute Ch. 299K and any corresponding Tribal codes, in accordance with Tribal, federal and state law governing such inspections.

- G. The Tribe and the State may enforce the requirements of Title III, MN Statute Ch. 299K, and any corresponding Tribal codes on Tribal land in any appropriate judicial forum and in a manner consistent with enforcement actions against facilities not located on Tribal land. To the extent that Tribal court is an appropriate forum, the State shall have standing in any Tribal court for purposes of such enforcement.

III. EMERGENCY RESPONSE

- A. The State and EPA agree during the term of this agreement to provide emergency response for releases of hazardous substances and petroleum that occur on any of the Tribe's Reservations. The State will respond to incidents in the same manner as the State would respond to an incident that occurred off the reservation. The State may, consistent with the requirements of the National Contingency Plan, refer an incident response to EPA at any point during the response. Emergency response will include actions the State or EPA, depending upon which entity is responding to the release, deems necessary to contain and stabilize a release so that the release no longer presents an immediate hazard to public health or the environment.
- B. The Tribe agrees to cooperate with the State and EPA whenever the State or EPA undertakes emergency response actions on one of the Tribe's reservations.
- C. For purposes of allowing the State and EPA to conduct emergency responses under this section, the Tribe also agrees to notify the State and National Response Center in the event of a release of a hazardous substance or petroleum.
- D. The Tribe agrees to allow the State and EPA, and their contractors and agents, to enter individual Indian owned, tribal owned, Indian trust land, and the exterior boundaries of the Tribe's reservations to respond to a release of a hazardous substance or petroleum. In entering into this agreement, neither the Tribe nor the State intend to resolve the issue or establish a precedent as to the resolution of the issue of whether tribal authorization is required for the State to respond to incidents within the exterior boundaries of the reservations.

- E. The State and EPA agree to notify and consult with the Tribe by calling the appropriate contact persons listed on attachment A prior to initiating an emergency response on any of the Tribe's reservations unless the nature of the emergency does not allow notification and consultation. If the nature of the emergency does not allow notification and consultation prior to commencement of the emergency response, the State and EPA will notify and consult with the Tribe as soon as practicable.
- F. The State and EPA may identify, locate, monitor, contain, remove, or dispose of hazardous substances or petroleum should the person or persons responsible for the release not take adequate action.
- G. The State and EPA may seek compensation from a responsible party in any appropriate judicial forum. To the extent that a Tribal court is an appropriate forum, the State shall have standing in any Tribal court to seek compensation for its costs from responsible parties.

IV. NO WAIVER OF SOVEREIGNTY

It is understood by the parties that this agreement does not waive the sovereignty of the Minnesota Chippewa Tribe or any of its six reservations, the State of Minnesota or the United States, nor affects the existing authority of any of the parties involved.

V. TERM OF AGREEMENT

This MOU shall remain in effect for an indefinite period, subject to renegotiation at the request of any of the parties and subject to cancellation upon 30 days notice by any of the parties.

Extension of
Memorandum of Understanding
Between
The Minnesota Chippewa Tribe,
the
State of Minnesota,
and the
United Environmental Protection Agency

Regarding the Implementation of
Title III Emergency Planning and
Providing for Emergency Response to
Release of Hazardous Substances and Petroleum

The Minnesota Chippewa Tribe (Tribe), the State of Minnesota (State) and the United States Environmental Protection Agency (EPA) entered into a memorandum of understanding (MOU) to improve the ability of the Tribe to respond to releases of hazardous chemicals by assisting the Tribe in developing its own emergency response to the release of hazardous substances and petroleum. Attachment A has been included to facilitate the proper notification of each reservation's representative.

Cooperation among parties in training, planning, and conducting exercises has been accomplished under the MOU. In addition, the MOU has served as a national model for cooperation among Tribes, emergency planning and community right-to-know act.

Since Tribe, State, and the EPA have a continuing need to cooperate in hazardous chemical planning and response, and the sharing of information about hazardous chemical storage, and since the MOU expires in February 1993, therefore, the Tribe, State, and the EPA agree to extend the MOU for an additional year, at which time the parties shall evaluate the accomplishments of the MOU. The review of the MOU may lead to a long-term agreement among the parties.

Signed:

Norman W. Deschampe, President
Minnesota Chippewa Tribe

Date: _____

Arne H. Carlson, Governor
State of Minnesota

Date: _____

Valdas Adamkus, Regional Administrator
Environmental Protection Agency, Region V

Date: _____

Peter J. Defoe, Secretary
Minnesota Chippewa Tribe

Date: _____

ATTACHMENT A
TITLE III MOU

MINNESOTA CHIPPEWA TRIBE
TITLE III EMERGENCY CONTACTS

NAME	RESERVATION/LOCATION	PHONE
Les Conner	BOIS FORTE/NETT LAKE	DAY: 218-757-3295 NIGHT: 218-757-3359
Dick Wilkie	BOIS FORTE/NETT LAKE	DAY: 218-757-3237 NIGHT: 218-757-3317
Joel Peterson	FOND DU LAC/CLOQUET	DAY: 218-879-4593 NIGHT: 218-624-5944
Steve Olson	FOND DU LAC/CLOQUET	DAY: 218-879-4593 NIGHT: 218-879-1930 218-384-4185
Kris Carre'	GRAND PORTAGE	DAY: 218-475-2453 NIGHT: 218-387-2766
Blaze Cyrette	GRAND PORTAGE	DAY: 218-475-2480 NIGHT: 218-475-2236
Larry Hardy	LEECH LAKE/CASS LAKE	DAY: 218-335-8240 NIGHT: 218-363-3075
Rich Robinson	LEECH LAKE/CASS LAKE	DAY: 218-335-8240 NIGHT: 218-335-6337
Mike Molinen	MILLE LACS	DAY: 612-532-4181 NIGHT: 612-532-3813
Don Wedl	MILLE LACS	DAY: 612-532-4181 NIGHT: 612-532-4299
Jeff Wark	WHITE EARTH	DAY: 218-573-3007 NIGHT: 218-935-2318
Mike Swan	WHITE EARTH	DAY: 218-573-3007 NIGHT: 218-573-3971
John Persell	MINNESOTA CHIPPEWA TRIBE/CASS LAKE	DAY: 218-335-6306 NIGHT: 218-751-2770

RESOLUTION 25-90

WHEREAS, The Minnesota Chippewa Tribal Executive Committee is the duly elected governing body of The Minnesota Chippewa Tribe, comprised of the six member reservations (Bois Forte, Fond du Lac, Grand Portage, Leech Lake, Mille Lacs and White Earth), and


WHEREAS, the Housing/Economic Development Subcommittee did meet on August 14, 1989 and recommends Tribal Executive Committee approval of this resolution.

NOW THEREFORE BE IT RESOLVED, that The Minnesota Chippewa Tribal Executive Committee is authorized, during an emergency to: Abate pollution by issuing cease and desist orders to any person or entity releasing pollution into the water, air, and land within the exterior boundaries of the six member reservations of The Minnesota Chippewa Tribe.

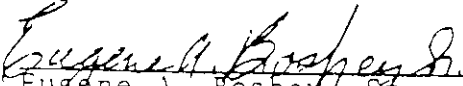
BE IT FURTHER RESOLVED, that The Minnesota Chippewa Tribal Executive Committee hereby may enter upon any land within the exterior boundaries of the six member reservations when necessary for remedial actions for the protection and restoration of human health, precious environment and natural resources from the threat of pollution.

BE IT FURTHER AND FINALLY RESOLVED, that The Minnesota Chippewa Tribal Executive Committee will document in writing, before or within a reasonable time after issuing a cease and desist order to any person or persons whom may cause a pollution or enter any land to protect and restore the environment, the facts supporting its findings that an environmental emergency exists on the Reservation.

We do hereby certify that the foregoing Resolution was duly presented and acted upon by a vote of 11 For, 0 Against, 0 Silent, at a Regular Meeting of The Minnesota Chippewa Tribal Executive Committee, a quorum present, held on August 15, 1989 at Duluth, Minnesota.



Darrell Wadena, President
THE MINNESOTA CHIPPEWA TRIBE



Eugene A. Boshey, Sr., Secretary
THE MINNESOTA CHIPPEWA TRIBE